The Impeachment of Charles Swayne, Federal Judge; An Infrequent Incident For the Present Generation

THE recent impeachment proceedings by the house of representatives sitting as a grand jury against Judge Charles Swayne of the northern district of Florida is one of the most interesting episodes of the present generation and as such merits proper attention. The complaint, set forth in a series of resolutions passed by the Florida legislature, charges the judge with various misdemeanors.

It is not the first attempt of the Florida legislature to obtain congressional investigation into the official conduct of Judge Swayne. As early as June 2, 1893, the governor signed a concurrent resolution which declared that the judge was conducting himself in such a manner as to cause the people of the state to doubt his integrity and to bring reproach upon the state's fair reputation. Nothing came of this action, and the judge professed to regard it as a bit of political pleasantry. The present resolutions adopted by the legislature are more specific than the former ones and were of sufficient gravity to attract attention at Washington.

There is an abundance of precedent governing an impeachment trial like the one which Judge Swayne must undergo. The impeachment of Warren Hastings has sometimes served as a model for this form of procedure, but the American congress is so unlike the British parliament in its ways of doing that English precedents cannot be followed to the letter, even though it be true that the custom and ceremonial of such proceedings come directly from parliamentary sources. The articles of impeachment drawn up by the house will not be as accurately and concisely worded as a legal paper. The house has always refused to eliminate from its charges all offenses not indictable. Drunkenness, incapacity and tyrannical conduct would be excellent ground for impeachment, but would not be indictable offenses under the statute. This point has been argued in all of the impeachment cases that have occurred in the United States, and only once has the contention prevailed that offenses not indictable must be stricken out. That solitary exception was in the first attempt to impeach Andrew Johnson, and it was made for political reasons.

ON THE BENCH.

JUDGE CHARLES SWAYNE.

IMPEACHMENT PROCEEDINGS IN THE SENATE.

Previous to the Swayne case the trial of officials by impeachment had been attempted only seven times in the United States. The first instance was that of William Blount, United States senator from Tennessee, who in 1797 conspired with British officers to steal part of Louisiana from Spain for England's benefit. The senate expelled him, but he was acquitted on the ground that a senator was not a civil officer. John Pickering, judge of the federal district court for New Hampshire, was in 1803 impeached for drunkenness and profanity and convicted. In 1804 Samuel Chase of Maryland, a justice of the supreme court of the United States, was impeached for using language reflecting upon the government, but was acquitted. Judge West H. Humphreys of Tennessee joined the Confederacy at the opening of the civil war and was impeached and convicted. Judge Peck of Missouri was impeached for permitting his personal opinions to dominate in court matters and was convicted. The most famous case was that of President Andrew Johnson, impeached on March 4, 1868. He was charged with violating the tenure of office act, with conspiring to prevent the execution of the law and with many other offenses. The trial occupied nearly three months and resulted in the president's acquittal by a single vote. The seventh impeachment recorded is that of William W. Belknap, secretary of war under President Grant. He was charged with corruption in office, but was not convicted. He resigned before the impeachment proceedings were begun, but the case went on.

Speaker Cannon selected the managers for the house in the Swayne case, yet that was not the historic practice. In the Belknap impeachment they were chosen by a resolution offered from the floor. In the Johnson case they were obtained by ballot. If the accused were a person of great eminence it is likely that the choice by ballot would be preferable, but the house has rarely resorted to this method, and if it should do so it would be by a resolution naming the men, and these selections would be the outcome of a caucus. The minority party is given representation, although all must be in favor of impeachment.

The impeachment trial of Andrew Johnson was such an unusual event that it was conducted in a manner befitting its importance. The house of representatives resolved itself into a committee of the whole and accompanied its managers to the senate. All the house clerks and doorkeepers also went to the senate chamber. The house and its attaches were received by the senate with marked solemnity and were provided with seats. The speaker was given a seat beside the president of the upper house. On the opening of the case and during the entire trial the chief justice presided. This was necessary on account of the fact that the virtual head of the senate was next in succession and was consequently an interested party. An interesting feature of the trial was the challenging of the vote of Senator Wade of Ohio, who was president pro tempore of the senate. He would have succeeded to the presidency of the United States if Mr. Johnson had been convicted, and objection was made that Mr. Wade's intimate connection with the case might prejudice his vote. No official action was taken, but Mr. Wade refrained from voting until the final issue, when he exercised his privilege.

President Johnson did not appear in person at his trial. To have done so would, of course, have been infra dignitatem. Belknap was present during his trial, as were also the federal judges at their hearings. There is nothing to prevent Judge Swayne from attending the sessions of the court of impeachment, and it is probable that he will avail himself of the privilege. He may even appear as a witness in his own behalf if he is permitted so to do, although no such precedent has ever been made. It is a strange fact that the right of unlimited debate which prevails in the senate on most occasions is withheld in impeachment proceedings. All questions of evidence must be decided by the senate without debate.

In his defense Judge Swayne filed with the subcommittee letters of indorsement from seventeen lawyers and five other persons recommending his appointment to the supreme court bench of the United States to succeed Justice Field. He also filed twenty-four letters, mostly from Florida attorneys, recommending his appointment to the circuit judgeship of the new circuit which was created by congress in 1899. In his brief Swayne states that he was born in Delaware in 1842, read law in Philadelphia and was admitted to practice there. In 1885 he removed to Florida, where he practiced his profession until he was called to the bench, in 1889. He admits that he has never been a registered voter anywhere and that he spends his summers in Delaware, but denies that he has neglected his work. He declares that the charges against him are due to political enmities.

TRUMAN L. ELTON.

The Ecclesiastical Muddle In the Land o' Cakes; The Lords' Decision Adds Fuel to the Flames

IN order to comprehend the unsettled and most unsatisfactory feeling which prevails all over Scotland on account of the recent ecclesiastical decision of the house of lords it will be profitable to make a brief study of the conditions which obtained in that country previous to the disturbing verdict.

Since the days when the redoubtable John Knox promulgated the doctrines which led up to the Westminster Confession Scotland has maintained a loyalty to Presbyterianism equaled only by Spain's fidelity to the Roman pontiffs. There are, to be sure, three kinds of Presbyterians in the land, and this difference in degree has been the immediate cause of the bitter controversy which has been provoked by the lords' decision. First, and most important in a sense, is the Established Church of Scotland. Its ministers draw their endowments from the tithes derived from the remnant of the lands once held by the Roman church and rescued from the subsequent rapacity of the nobles. It represents the authorized conservative Presbyterian element and need assume a defensive attitude only when it is threatened with disestablishment. It is doubtless very greatly interested in the present upheaval, but it is not one of the principals in the conflict. It is not the largest Presbyterian body in Scotland in point of numbers. That distinction belongs to the United Free church.

The Free church was formed in 1843 by the withdrawal of a large number of ministers and members from the Church of Scotland. They did not so much protest against the idea of a state church, but they upheld that it should be a national church independent of the civil magistrate. In their "Claim of Right" they asserted: "We are not voluntaries. We are leaving a corrupt establishment, but would rejoice to return to a pure one." As years passed and a new generation sprang up this principle was abandoned, and the Free church regarded itself as a voluntary church and advocated disestablishment. A remnant of the dissenters, however, always adhered to the old idea. After awhile the Free church came under the influence of the so called "higher criticism" and revolted against the broad Calvinism of the Confession of Faith. Finally, in 1892, the Free church adopted a resolution to relax the Confession on several radical points, more especially the Calvinistic teaching in regard to election. This gave great offense to the orthodox few who were already antagonistic to the sweeping theological changes which had been made. They smothered their indignation awhile longer, but after about eight years the Free church united with another Presbyterian body, which had been formed out of the odds and ends of all species of Calvinistic dissent, the United Presbyterians, and took the name of the United Free church. This was the straw that broke the camel's back. The little band of orthodox Free church men refused to enter the union and laid claim to all the property of the Free church on the ground that the majority had abandoned its original identity. The Scottish courts decided against their claim, and they carried their grievance to the house of lords and gained the victory.

The decision of the lords is most astonishing when the comparative strength of the two divisions is considered. There were 1,104 congregations in the Free church at the time of the union. Of these 1,078 pronounced in favor of the union, and twenty-six refused to sanction it. The two sections became known immediately as the "United Frees" and the "Wee Frees." There are three Free church divinity schools in Scotland, and the professors of all of them gave in a ready adherence to the union.

The house of lords' decision was to the effect that the whole of the Free church organization, its invested funds amounting to over $5,000,000, the church buildings, the colleges and the missions belong not to the powerful majority, but to the twenty-six congregations. The total membership of the twenty-six congregations which refused to accept the union amounts to rather less than 5,000, and their ministers are for the most part men who are inconspicuous in the church. Most of the congregations are in the highlands, and a number of them are Gaelic speaking.

It is likely that the present disturbance would never have occurred if the United Frees had been content with union and the higher criticism and had left the Wee Frees to their own devices. After union, however, they began to conduct matters with a high hand. They declined to accord any rights whatever to the insignificant majority. They even rejected the Wees from churches in districts in which the paucity of churchgoing inhabitants might have suggested kindlier treatment. It was in desperation that the dissenters sought relief in the courts.

There is a great unwillingness in the United Kingdom to question a decision of the house of lords. It is seldom done, and the belief is general that many difficulties are likely to be encountered in the process. The decision, furthermore, is pretty universally admitted to be sound from a legal standpoint, but there are a few jurists who insist that the lords were mistaken in applying the principle of trusts to a church which is not a body with fixed articles of association, but a body with inherent powers of growth. Be that as it may, every one is convinced that the decision will work great hardship and that it cannot be carried out in its entirety.

Even if they should take possession of everything, which the lords' decision permits them to do, the Wee Frees would be unable to carry on the work of the church. For the support of home congregations alone more than $1,000,000 a year is required. The Wee Frees can raise only $20,000 or $25,000 at the very best. The same statement applies to missions, which are supported by current subscriptions. The Wee Frees would be obliged to abandon mission work altogether. However devoted the Wee Frees may be to the cause of free Presbyterianism in Scotland—and their devotion is admitted even by their opponents—they will find it impossible to maintain the machinery of a church which has taxed the resources of its members in the richest parts of Scotland. Lord Davey, himself a Scotchman and one of the judges who gave the decision, has suggested that the most equitable plan would be to divide the property in proportion to the sizes of the two sections.

Since the lords' judgment was made public, Aug. 1, 1904, there has existed a constant state of wrangling and litigation of various forms. About the middle of November a great convocation of ministers and elders assembled at Edinburgh to devise some means of relief, and in the evening a great public meeting was held in the Waverley Market hall, at which over 10,000 persons were present. Special trains were run from all parts of Scotland, and messages of sympathy were received from all parts of the world. The situation is certainly unique and full of possibilities.

ALEX M. PALMER.

James R. Garfield, Commissioner of Corporations; A President's Son Who Has Made a Reputation For Himself

THE first annual report of James Rudolph Garfield, commissioner of corporations in the department of commerce and labor, which the president has recently transmitted to congress, had been awaited with much impatience by those who are interested in the problem of trust legislation. In some quarters it was feared that it might exert a depressing effect on business, since it was understood to be an expression of the president's own opinions upon the questions which have given rise to so much discussion. The most important feature of the commissioner's report is the recommendation that congress be requested to consider the advisability of enacting a law providing for a federal franchise or license for business corporations.

Mr. Garfield makes no apology for the present system of control of corporations. He denounces it as "thoroughly vicious" and declares that its operations amount to anarchy. He enumerates as some of the principal evils existing under present industrial conditions secrecy and dishonesty in promotion, overcapitalization, unfair discrimination by means of transportation and other rebates, unfair and predatory competition, secrecy of corporate administration and misleading or dishonest financial statements. He declares that it is not sufficient to prove the existence of these evil practices, but that remedies should be found for them. He maintains that severe penalties will not put an end to the existing evils; some other remedy must be found.

According to the commissioner, four remedies have been suggested—additional state action, delegation by the federal government to the states of the control of interstate commerce, federal incorporation and the federal franchise or license system for interstate commerce. The first two suggestions, he thinks, are impossible of realization. He is prepared to recommend the fourth suggestion, and that only.

Mr. Garfield admits that during the investigations conducted by the bureau much information asked for was withheld by certain corporations. It is a fact that at least one of the most gigantic trusts in existence refused point blank to be catechised in a single particular and instructed its attorneys to be in readiness to make a legal test of the matter. Most of the great corporations, however, responded promptly to the bureau's request for information and expressed a willingness to afford all the assistance desired in the investigation. The commissioner did not hesitate to notify the noncomplying trusts that if at any time their assistance in the investigation should become necessary the government would avail itself of the compulsory feature of the statute. He adds, "Legitimate business and law respecting persons and corporations have nothing to fear from the proposed exercise of this great governmental power of inquiry."

Federal and state antitrust legislation, Mr. Garfield thinks, resolves itself into two classes—one aimed at the prohibition of monopoly and restraint of trade and the other directed toward rebates, discriminations and unfair competition. The first has proved to be singularly ineffective, and the second might be remedial if it were honestly applied. State tax laws affecting corporations are in a state of hopeless confusion, based upon conflicting principles, resulting frequently in double taxation, or perhaps none at all, and so obscure as to defy interpretation by the very officials appointed to execute them.

Still following the commissioner's line of argument, it appears that an examination of existing legislation on economic questions shows two classes of such statutes, one effective and the other the reverse. Under the first class are factory acts, compulsory education, forms of business, regulation of corporate organization and management, safety appliances, prevention of fraud, etc., all of which have been enforced and have accomplished good. To the other class belong usury laws, absolute regulation of prices, antitrust laws and antispeculation laws. These have not only proved their utter worthlessness as remedial measures, but have often been distorted into producing an effect exactly opposite that originally intended.

James Rudolph Garfield was born at Hiram, O., Oct. 17, 1865. At that time his father, afterward twentieth president of the United States, was president of Hiram college, an institution conducted by the Christian church, of which the Garfields were devoted adherents. Young Garfield was prepared for college at the famous St. Paul's school, Concord, N. H., and matriculated at Williams college, from which he was graduated in 1885. He afterward studied law at Columbia university and was admitted to the bar in 1888. He began the practice of his profession in Cleveland as a member of the firm of Garfield, Garfield & Hewe. He entered the political field almost immediately and was prominent in several campaigns. Mr. Garfield was elected to the Ohio senate and served one term. He was the author of the Garfield election law, which requires all nominees for elective offices to file with the secretary of state a sworn statement of expenses incurred during the campaign. The law, however, was subsequently repealed. He was made a member of the national civil service commission by President Roosevelt and served in that capacity until the organization of the new department of labor and commerce, when he became commissioner of corporations under Secretary Cortelyou.

The office was an entirely new one, and there were no precedents to guide Mr. Garfield in the discharge of his official duties. The law provided that the commissioner should have authority, under direction of the secretary of the department of commerce and labor, "to make diligent investigation into the organization, conduct and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several states and with foreign nations, excepting common carriers, subject to an act to regulate commerce, approved Feb. 4, 1887, and to gather such information and data as will enable the president of the United States to make recommendations to congress for legislation for the regulation of such commerce and to report such data to the president from time to time as he shall require."

Mr. Garfield occupies the old family residence at Mentor, O., as a summer home and has other residences at Cleveland and at Washington. He is a trustee of Williams college, president of the board of trustees of Lake Erie college and holds many other positions of trust.

PHILIP RITCHIE.

LAWYER.

JAMES R. GARFIELD.

COMMISSIONER OF CORPORATIONS.